A GUIDE TO THE ILLINOIS FREEDOM OF INFORMATION ACT

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INTRODUCTION:
Is "Freedom of Information" Something New in Illinois Law?

The Freedom of Information Act is the principal Illinois statutory enactment governing the inspection of public records. Although the Act is of relatively recent origin, having become effective on July 1, 1984, the right to inspect and copy public records is one of long standing in Illinois law. The Illinois Constitution of 1970, previously enacted statutes relating to certain types of records, and the common law, with respect to records in general, have together secured the public's right to inspect and copy public records.

Illinois courts have long recognized that "good policy requires liberality in the right to examine public records". (Weinstein v. Rosenbloom (1974), 59 Ill. 2d 475, 482; see also Warden v. Byrne (1st Dist. 1981), 102 Ill. App. 3d 501, 505.) The courts have also recognized a common law duty to disclose public records, qualified only by a balancing of the public's right to know against individual privacy rights and governmental interests. (Lopez v. Fitzgerald (1st Dist. 1977), 53 Ill. App. 3d 164, 167, aff'd 76 Ill. 2d 107.) According to the court in People ex rel. Gibson v. Peller (1st Dist. 1962), 34 Ill. App. 2d 372, 374, the common law right to inspect records also carries with it a right to reproduce or copy public records:

> "The right * * * to reproduce * * * public records is not solely dependent upon statutory authority. There exists at common law the right to reproduce, copy and photograph public records as an incident to the common law right to inspect and use public records. Good public policy requires liberality in the right to examine public records. In

> 76 CJS, Records, p. 133, the author states: 'The right of access to, and inspection of, public records is not entirely a matter of statute. The right exists at common law, and in the absence of a controlling statute, such right is still governed by the common law....All authorities are agreed that at common law a person may inspect public records...or make copies or memoranda thereof.'"

Access to certain kinds of public records is guaranteed by article VIII, section 1(c) of the Illinois Constitution of 1970, which provides:

> "Reports and records of the obligation, receipt and use of public funds of the State, units of local government and school districts are public records available for inspection by the public according to law."

This constitutional mandate has been implemented in section 3 of the State Records Act (5 ILCS 160/3) and section 3a of the Local Records Act (50 ILCS 205/3a), which require the State and its subdivisions to permit inspection and copying of reports and records of the receipt, use and obligation of public funds.

Furthermore, statutes relating to specific officers have required that certain records be open to public inspection. See, for example, sections 3-2012 and 3-2013 of the Counties Code (55 ILCS 5/3-2012, 3-2013), which provide that records of county clerks "shall be open to the inspection of all persons without reward", and require such clerks "to give any person requiring the same, and paying the lawful fees therefor, a copy of any record, paper or account in his office".

Since it has long been the public policy of this State to allow access to public records, the Freedom of Information Act did not drastically change the substance of Illinois law. The significance of the Act is that it provides a comprehensive statutory statement of that longstanding public

policy, provides a codified balancing of the competing interests recognized at common law, and establishes procedures to facilitate inspection of records.

The fundamental policy of the Act is stated in section 1 thereof:

> "Pursuant to the fundamental philosophy of the American constitutional form of government, it is declared to be the public policy of the State of Illinois that all persons are entitled to full and complete information regarding the affairs of government and the official acts and policies of those who represent them as public officials and public employees * * *."

The Freedom of Information Act, which was modeled, in part, on the Federal Freedom of Information Act, provides a description of public bodies that are subject to the Act. It provides a detailed description of those records that are "public records" that generally must be disclosed, and also a detailed list of records that may be withheld from inspection and copying. The Act sets out procedures that public bodies must follow in making records available, and also procedures through which any person may gain access to public records for inspection and copying. Finally, it provides for both administrative and judicial review of any decision to withhold records from inspection and copying. A series of questions and answers designed to explain what the Act requires and how its requirements can be met is set forth below.

I. Summary of the Act:

What does the Act require?

The principal mandate of the Act is found in subsection 3(a), which provides that "[e]ach public body shall make available to any person for inspection or copying all public records". The remainder of the Act implements this requirement.

II. Which agencies or bodies are subject to the requirements of the Act?

The Act requires all "public bodies" to make their public records available for inspection. According to subsection 2(a) of the Act, the term "public body" includes any legislative, executive, administrative, or advisory bodies of the State, State universities and colleges, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees, or commissions of this State, and any subsidiary bodies of those public bodies, including but not limited to committees and subcommittees which are supported in whole or in part by tax revenue, or which expend tax revenue. The definition of "public body" in the Freedom of Information Act is almost identical to the definition of that term contained in the Open Meetings Act (5 ILCS 120/1.02). It is, however, broader in scope. Thus, while all bodies subject to the Open Meetings Act are subject to the Freedom of Information Act, individual officers and agencies not covered by the Open Meetings Act are also included. An individual officer who is merely a member of a greater public body is not, however, a separate public body. Therefore, a request for records relating to aldermanic travel records was properly directed not to an individual alderman but to the mayor and city council. (Quinn v. Stone (1st Dist. 1991), 211 Ill. App. 3d 809.) Because the definition of "public body" in the Freedom of Information Act does not include judicial bodies, court records and records of such entities as a probation department that reports to the chief judge are outside the coverage of the Act. (Copley Press, Inc. v. Administrative Office of the Courts (2nd Dist. 1995), 271 Ill. App. 868, appeal denied, 163 Ill. 2d 551 (documents

relating to the pretrial electronic monitoring of criminal defendants).) Moreover, the Act is not applicable to private not-for-profit or business corporations even though such corporations administer programs that expend public funds or otherwise receive public funds. Hopf v. Topcorp, Inc. (1st Dist. 1988), 170 Ill. App. 3d 85, appeal after remand, 256 Ill. App. 3d 807 (1993).

III. What types of records must be made available to the public?

It is the policy of the State, as enunciated in the Act, that all persons are entitled to "full and complete information regarding the affairs of government and the official acts and policies of those who represent them". The Illinois Supreme Court has stated that "[f]reedom of information fosters government accountability and an informed citizenry". (Bowie v. Evanston Community Consolidated School District (1989), 128 Ill. 2d 373, 378.) The Act does, however, recognize that in order to enable public bodies to perform certain governmental functions properly, and in order to protect personal privacy, some records and information may need to be kept confidential. The Act attempts to balance these competing interests by giving a very broad and inclusive definition of "public records", but also providing a limited number of very specific exceptions that allow public bodies to withhold certain types of documents from public inspection. In this sense, the Act itself provides the balance judicially obtained under the common law. The exceptions are, however, in derogation of the general policy requiring that records be open to the public and, therefore, must be narrowly construed. (Bowie v. Evanston Community Consolidated School District (1989), 128 Ill. 2d 373, 378.) As is

stated in section 1 of the Act, "restraints on information access should be seen as limited exceptions to the general rule that the people have a right to know the decisions, policies, procedures, rules, standards, and other aspects of government activity that affect the conduct of government and the lives of any or all of the people".

Subsection 2(c) of the Act defines the term "public records" to include all records, reports, forms, writings, letters, memoranda, books, papers, maps, photographs, microfilms, cards, tapes, recordings, electronic data processing records, recorded information and all other documentary information having been prepared, or having been or being used, received, possessed or under the control of any public body. The physical characteristics of records are not relevant in classifying them as "public records", because the Act expressly extends to all records regardless of their physical form or characteristics. Rather, the most important factor in determining whether a record is a "public record" is whether it has been prepared, or was or is being used, received, possessed or under the control of any public body. It has been held that it is the obligation of a public body to provide a requesting party with records in the form in which they are ordinarily kept, if so requested; a public body may not elect to furnish records in a different format. (AFSCME v. County of Cook (1990), 136 Ill. 2d 334, 345-47.) Thus, when a requesting party sought a copy of computerized records on a computer tape, the public body could not satisfy the request by furnishing a printout of the records.

The Act expressly includes a non-exhaustive list of 16 types of information that are within the definition of "public records". That list includes the following types of records:

(i) administrative manuals, procedural rules, and instructions to staff, unless exempted by subsection 7(1)(p) of the Act;

(ii) final opinions and orders made in the adjudication of cases, except an educational institution's adjudication of student or employee grievance or disciplinary cases;

(iii) substantive rules;

(iv) statements and interpretations of policy which have been adopted by a public body;

(v) final planning policies, recommendations, and decisions;

(vi) factual reports, inspection reports, and studies whether prepared by or for the public body;

(vii) all information in any account, voucher, or contract dealing with the receipt or expenditure of public or other funds of public bodies;

(viii) the names, salaries, titles, and dates of employment of all employees and officers of public bodies;

(ix) materials containing opinions concerning the rights of the State, the public, a subdivision of State or a local government, or of any private persons;

(x) the name of every official and the final records of voting in all proceedings of public bodies;

(xi) applications for any contract, permit, grant, or agreement except as exempted from disclosure by subsection 7(1)(g) of the Act;

(xii) each report, document, study, or publication prepared by independent consultants or other independent contractors for the public body;

(xiii) all other information required by law to be made available for public inspection or copying;

(xiv) information relating to any grant or contract made by or between a public body and another public body or private organization;

(xv) waiver documents filed with the State Superintendent of Education or the president of the University of Illinois under Section 30-12.5 of the School Code, concerning nominees for General Assembly scholarships under Sections 30-9, 30-10, and 30-11 of the School Code; and

(xvi) complaints, results of complaints, and Department of Children and Family Services staff findings of licensing violations at day care facilities, provided that personal and identifying information is not released.

This list is designed to provide assistance in determining whether particular records fall within the purview of the Act. Even though a particular document is not included in this list, however, it is still a public record under the Act if it was prepared, or was or is being used, received, possessed, or under the control of any public body.

It is important to note that upon receiving a request for access to a record that is exempt from disclosure but that contains nonexempt information, the public body must separate the exempt from the nonexempt information and disclose the nonexempt information. (5 ILCS 140/8; Bowie v. Evanston Community Consolidated School District (1989), 128 Ill. 2d 373, 380.) If such information is maintained only on computer tapes or disks, the public body may be required to prepare a computer program that will segregate the information; this does not require the creation of a new record. Hamer v. Lentz (1989), 132 Ill. 2d 49, 56.

IV. What types of records are exempt from public inspection?

To enable public bodies to keep confidential certain types of sensitive public records, the Act provides 36 exceptions to the mandate that public records be made available for public inspection. Public bodies should

always refer to the text of the Act before determining whether documents are exempted from its requirements. The exemptions do not, however, prohibit the dissemination of information; rather, they merely authorize the withholding of information. (Roehrborn v. Lambert (1st Dist. 1995), 277 Ill. App. 3d 181, 186, appeal denied, 166 Ill. 2d 554.) Moreover, when one public body obtains records from another public body that the former knows would assert an exemption, it appears that the originating body must be given the opportunity to assert any applicable exemption which the receiving body fails to assert. (Twin-Cities Broadcasting Corp. v. Reynard (4th Dist. 1996), 277 Ill. App. 3d 777.) Although the court left open the question of whether the originating body may be deemed to have waived its right to assert an exemption by providing those records to another public body, it is clear that a public body which possesses records originating in another body should consult with the originating body prior to producing records pursuant to a request therefor.

In determining whether certain records are exempt from disclosure, reference must be made not only to the enumerated exceptions, but also to the definition of public records. For example, subsection 7(1)(b) exempts from disclosure personnel records maintained with respect to public employees. The definition of "public records", however, specifically provides that the names, salaries, titles and dates of employment of all employees and offices of public bodies shall be public records. Reading these provisions together, it is clear that, consistent with prior case law, the General Assembly intended the public to have access to the specified types of information concerning public employees notwithstanding the general exemption in subsection 7(1)(b).

The first exception, contained in subsection 7(1)(a), provides for withholding information which Federal or State law, or rules and regulations adopted pursuant thereto, prohibit disclosing. In Bowie v. Evanston Community Consolidated School District (1989), 128 Ill. 2d 373, 380-81, the court held that the provisions of the Illinois School Student Records Act (105 ILCS 5/36-1 et seq.), which generally limit access to records concerning a student by which the student may be individually identified, did not prohibit release of masked and scrambled test results which deleted individual identifying data. It has also been held that probation records are exempt from disclosure under subsection 7(1)(a) of the Act, because such records are prohibited from disclosure, except to judges and probation officers or by order of court, by "AN ACT providing for a system of probation, etc." (730 ILCS 110/12). (Smith v. Cook County Probation Department (1st Dist. 1986), 151 Ill. App. 3d 136, 138.) (Although the court apparently assumed that these records were subject to the Freedom of Information Act, it appears that probation records, being records of the judiciary, would not ordinarily constitute records of a "public body", for purposes of the Act. Therefore, they would not be subject to disclosure under its provisions.) Conversely, where another statute or administrative regulation requires information to be disclosed to a person, the Freedom of Information Act does not permit that information to be withheld. (Etten v. Lane (5th Dist. 1985), 138 Ill. App. 3d 439.) Public records cannot be withheld from disclosure under subsection 7(1)(a) simply because the parties agree to a "gag order" and that order is entered by a

court. Carbondale Convention Center v. City of Carbondale (5th Dist. 1993), 245 Ill. App. 3d 474, 477.

The other exceptions can be categorized into the six groups set out below. It should be emphasized that not all documents which might fall within a general category are exempt. Rather, the Act exempts only those documents that are covered by a specific exception.

PERSONAL PRIVACY

The primary exception in the group of exceptions that is designed to protect personal privacy is found in subsection 7(1)(b), which exempts information that, if disclosed to the public, would result in a clearly unwarranted invasion of personal privacy. Some categories of records are specifically classified as exempt under subsection 7(1)(b) for this reason, including: (i) files and personal information regarding individuals receiving social, medical, educational, or other similar services; (ii) personnel files and personal information regarding employees or officials of public bodies; (iii) files and personal information maintained with respect to professional or occupational registrants or licensees; (iv) information required of taxpayers for tax assessment or collection purposes; and (v) information that would reveal the identity of persons who file complaints with or provide information to administrative, investigative, law enforcement or penal agencies. In some cases panels of the Illinois Appellate Court had held that even as to information falling within these categories, the public body and the court must further determine whether or not disclosure would constitute a clearly unwarranted invasion of personal privacy. (See, e.g., City of

Monmouth v. Galesburg Printing and Publishing Co. (3rd Dist. 1986), 144 Ill. App. 3d 224; CBS, Inc. v. Partee (1st Dist. 1990), 198 Ill. App. 3d 936.) Others had held that such further inquiry was not necessary, i.e., that information falling within any of the five categories is per se exempt from disclosure. (See, e.g., Healey v. Teachers Retirement System (4th Dist. 1990), 200 Ill. App. 3d 240.) In Lieber v. Board of Trustees of Southern Illinois University (1997), 176 Ill. 2d 385, the supreme court resolved the difference of opinion in favor of the per se approach, concluding that information falling within one of the listed categories is exempt from disclosure without need of further analysis. In resolving this issue, however, the court also suggested that not all information identifiable to a given individual should necessarily be considered to constitute "personal information" for purposes of categories (i), (ii), and (iii). In Lieber the plaintiff was a private housing provider who sought the names and addresses of persons who had been accepted but not yet enrolled at Southern Illinois University. Finding in favor of the plaintiff, the court determined that the term "personal information" must have been intended by the General Assembly to be understood not in the sense of basic identification but in the sense of information that is confidential or private. If "personal information" included basic identification, then absurd consequences would result such as a person’s not having the right to learn the names of public office holders or to confirm that his or her surgeon is licensed to practice medicine. Lieber v. Board of Trustees of Southern Illinois University (1997), 176 Ill. 2d 385, 412.

Information covered in the five categories of subsection 7(1)(b) is not the only information exempted by that provision; its scope is expressly not limited thereto. In determining whether or not the disclosure of other types of information would constitute a clearly unwarranted invasion of personal privacy, the courts have applied a balancing test in which the following factors are considered: (1) the plaintiff's interest in disclosure, (2) the public interest in disclosure, (3) the degree of invasion of privacy, and (4) the availability of alternative means of obtaining the records. See, e.g., Schessler v. Department of Conservation (4th Dist. 1994), 256 Ill. App. 3d 198 (licenses to conduct live pigeon shoots were not exempt from disclosure).

With respect to this exception, the Attorney General has determined that the names of persons who apply for or are granted licenses under the Community and Ambulatory Currency Exchange Act (205 ILCS 405/.1) are not exempt from disclosure under subsection 7(1)(b). (1990 Ill. Att'y Gen. Op. 264.) In Cooper v. Department of the Lottery (1st Dist. 1994), 266 Ill. App. 3d 1007, the court held that sales data for lottery agents in certain geographic areas were not exempt from disclosure as an invasion of personal privacy. The court noted that lottery agents act as fiduciaries of the State, and are readily identified as such by the license they are required to display.

It should be noted that subsection 7(1)(b) also provides that the disclosure of information bearing on the public duties of public employees or officials shall not be considered an invasion of personal privacy and that information that would otherwise be exempt as a clearly unwarranted invasion

of personal privacy is not exempt if disclosure is consented to in writing by the subject of the information.

Other exemptions relating to personal privacy include subsection 7(1)(aa), which exempts from disclosure certain records of the Experimental Organ Transplantation Procedures Board relating to applications it receives, and subsection 7(1)(cc), which exempts records held by the Department of Public Health relating to sexually transmissible diseases.

In addition, subsection 7(1)(hh) exempts documents generated in the complaint disposition process before any of State ethics commissions under the State Gift Ban Act (5 ILCS 425). The Attorney General has opined that, although other exemptions may apply to specific documents, exemption (hh) does not apply to units of local government or school districts. Ill. Att'y Gen. Op. No. 99-007, issued June 30, 1999, at pp. 25 - 26.

LAW ENFORCEMENT

A second group of exceptions covers records related to investigations, law enforcement, and corrections. Under subsection 7(1)(c) of the Act, records compiled by any public body for administrative enforcement proceedings or by law enforcement or correctional agencies for law enforcement purposes or for internal matters of public bodies are exempt if disclosure would interfere with litigation or administrative enforcement proceedings, deprive a person of a fair hearing, unavoidably disclose the identity of a confidential source, disclose specialized investigative sources or techniques or documents of correctional agencies related to crime or misconduct, endanger someone's life, constitute an invasion of personal privacy or obstruct an ongoing criminal investigation.

In Griffith Laboratories U.S.A. v. Metropolitan Sanitary District (1st Dist. 1988), 168 Ill. App. 3d 341, 347-48, the court held that water sample data compiled by the District to determine whether users were complying with a self-reporting waste water system were exempt from disclosure under subsection 7(1)(c). The court concluded that the data constituted investigatory records for law enforcement purposes, the disclosure of which would interfere with contemplated enforcement proceedings, in that disclosure would render the self-reporting system useless. (Note that the text of subsection 7(1)(c) has subsequently been amended; the amendment, however, would not appear to disturb the reasoning of the court.)

Further, in Copley Press, Inc. v. City of Springfield (4th Dist. 1994), 266 Ill. App. 3d 391, the court held that an investigative file concerning allegations of sexual harassment against a chief of police was properly withheld under subsection 7(1)(c)(iv) because its release, even if personal identifying information was redacted, would unavoidably result in the disclosure of the identity of the confidential sources who supplied the information. The court was clearly influenced by the fact that the sources who were interviewed for the report were promised confidentiality and that police department employees had been ordered to answer all questions truthfully or be faced with disciplinary action.

Subsection 7(1)(d) exempts criminal history information other than chronological arrest logs, the names and alleged offenses of persons in custody, records otherwise public under law or related to the requesting party. Effective July 29, 1999, amendments to the State Records Act (5 ILCS 160/4a), Local Records Act (50 ILCS 205/3b), Campus Security Act (110 ILCS

12/15) and Civil Administrative Code (20 ILCS 2605/55a) require that specified arrest information be made available to the news media for inspection and copying as soon as practicable, but in no event more than 72 hours from the time of the arrest. (Public Act 91-309.) Under subsection 7(1)(e), records related to security in correctional institutions are also exempt from disclosure. Manuals or instructions to the staff of public bodies regarding establishment or collection of liability under State tax laws, or that relate to investigations to determine violation of criminal laws, are exempt under subsection 7(1)(z). Lastly, subsection 7(1)(jj) exempts information contained in local emergency energy plans submitted in accordance with a local emergency plan ordinance.

EDUCATION

The Act exempts from disclosure several types of records related to education, including research and course materials (subsection 7(1)(v)), library circulation records (subsection 7(1)(l)), test questions and answers (subsection 7(1)(j)), faculty evaluations (subsection 7(1)(o)), records of university grievance procedures (subsection 7(1)(u)), and information relating to the identity of purchasers or qualified beneficiaries of Illinois prepaid tuition contracts (subsection 7(1)(gg)).

LEGAL PROCEEDINGS

Certain records related to litigation or other legal procedures are also exempt from disclosure. These include investigatory records compiled for law enforcement purposes when legal proceedings are contemplated or pending (subsection 7(1)(c)(i)). The Act also exempts communications between a public body and an attorney or auditor representing that body that would not

be subject to discovery in litigation, as well as material compiled for a public body in anticipation of legal proceedings and at the request of an attorney and material compiled regarding internal audits of public bodies (subsection 7(1)(n)). This exemption, however, provided no basis to withhold records of the payments made to a law firm representing a public body in pending litigation where the records named the payee law firm, designated the amount and date of each payment, contained no legal advice, and revealed the substance of no attorney-client confidence either directly or indirectly. (People ex rel. Ulrich v. Stukel (1st Dist. 1997), 294 Ill. App. 3d 193, 203 - 204, appeal denied, 178 Ill. 2d 595.) Under subsection 7(1)(q), documents other than final agreements relating to collective bargaining with a public body are also exempt. (For a discussion of the collective bargaining exemption, see IELRB v. Homer Community Consolidated School District (4th Dist. 1987), 160 Ill. App. 3d 730.)

It has been held that a public body may not withhold records relating to site selection for a landfill on the basis that the acquisition of property selected may require condemnation. The mere possibility that litigation will be required is not sufficient to exempt records relating to pre-acquisition analysis. Osran v. Bus (2nd Dist. 1992), 226 Ill. App. 3d 704.

INTERNAL OPERATIONS

Another category of exemptions pertains to documents related to the internal operations of public bodies. Exempted from disclosure are manuals and instructions to staff that relate to establishment or collection of tax liability or to investigations of criminal activity (subsection

7(1)(z)). Preliminary drafts of memoranda in which opinions or policies are formulated are also exempt from disclosure (subsection 7(1)(f)). In claiming that records are exempt under subsection 7(1)(f), the burden is on the public body to establish, as a matter of fact, that the records are preliminary rather than final. That factual determination is subject to judicial review. Hoffman v. Department of Corrections (1st Dist. 1987), 158 Ill. App. 3d 473, 476-77.

Minutes of meetings closed under the provisions of the Illinois Open Meetings Act are exempt from disclosure (subsection 7(1)(m)). Information regarding access to data processing equipment on which other exempt records are kept is exempted by subsection 7(1)(p), and subsection 7(1)(w) exempts information related solely to the internal personnel rules and practices of a public body. In applying subsection 7(1)(w) to certain records maintained by law enforcement agencies, the appellate court held that such records are exempt from disclosure only if the records were developed predominantly for internal use and disclosure would significantly risk circumvention of laws and regulations by those who are regulated. Baudin v. City of Crystal Lake (2nd Dist. 1989), 192 Ill. App. 3d 530, 542.

Subsection 7(1)(j) exempts test questions, scoring keys and other examination data used to administer examinations for academic, employment or licensing purposes. In Roulette v. Department of Central Management Services (1st Dist. 1986), 141 Ill. App. 3d 394, the court held that subsection 7(1)(j) exempts from disclosure psychological examination reports produced during an applicant's evaluation for government employment. The court further held that

such information related to internal personnel practices and was thus also exempt under subsection 7(1)(w).

BUSINESS AND FINANCE

The Act contains a number of exceptions that are designed to protect the business or financial interests of both private persons and public bodies. Records containing trade secrets (subsection 7(1)(g)), valuable formulas or designs (subsection 7(1)(i)) and architect's and engineer's plans for buildings not constructed with public funds, and for those buildings constructed with public funds to the extent that disclosure would compromise security (subsection 7(1)(k)), are all exempt from public disclosure. Documents containing information on contracts or agreements that, if disclosed, would frustrate procurement procedures are exempt (subsection 7(1)(h)). Records related to real estate purchases are exempt until negotiations for purchase are terminated or completed (subsection 7(1)(s)). (In Osran v. Bus (2nd Dist. 1992), 226 Ill. App. 3d 704, the court held, however, that records relating to the selection of potential sites for a county landfill, that were compiled prior to the initiation of real estate purchase negotiations, were not exempted from disclosure under subsection 7(1)(s).) Records of a public body's financial market transactions and information regarding supervision of financial institutions are also exempt in some cases (subsections 7(1)(r) and 7(1)(x)). Some records related to insurance and self insurance by a public body are exempt (subsections 7(1)(t), 7(1)(bb)), as are firm performance evaluations under section 55 of the Architectural, Engineering, and Land Surveying Qualifications Board Selection Act (30 ILCS 535/55) (subsection 7(1)(ee)). Finally, information that might

lead to the disclosure of confidential information, codes, algorithms, programs, or private keys intended to be used to create electronic or digital signatures under the Electronic Commerce Security Act (5 ILCS 175) is exempt under subsection 7(1)(jj).

In Cooper v. Department of the Lottery (1st Dist. 1994), 266 Ill. App. 3d 1007, the court held that a marketing plan prepared for the State Lottery and related sales data were not exempt from disclosure under subsection 7(1)(g) as a trade secret, because the Lottery, which possessed the proprietary interest in these records, is a monopoly which would suffer no competitive harm by the release thereof, and because a governmental entity cannot invoke this exception when it commissions a report of this type. Subsection 7(1)(g) is intended to protect information which is proprietary property of a private party and which is submitted to the government under an express or implied promise that it will be kept confidential. The court also held that disclosure was not exempt under subsection 7(1)(r), because that exception does not relate generally to marketing matters, but only to the marketing of government bond issues by public bodies. In an interesting interpretation of subsection 7(1)(g), the appellate court concluded in Roulette v. Department of Central Management Services (1st Dist. 1986), 141 Ill. App. 3d 394, that a psychological examination of an applicant for government employment fell within the "trade secret" exemption, because disclosure could inflict substantial competitive harm upon the psychologist and could thereby make it more difficult for the agency to induce people to submit similar information in the future.

V. May records be withheld solely because they are to be used for a commercial purpose?

Section 1 of the Act, which declares the policy of the State with respect to public access to government records, provides, in part, that the Act "is not intended to be used . . . for the purpose of furthering a commercial enterprise . . .." This statement is not a separate exemption, and records may not be withheld solely on this basis. As our supreme court has said, "section 1 is simply a declaration of policy or preamble. As such, it is not part of the Act itself and has no substantive legal force. [Citations omitted.]" Lieber v. Board of Trustees of Southern Illinois University (1997), 176 Ill. 2d 385, 413 - 414.

The intended use of requested information to further a commercial enterprise may, nevertheless, come into play in applying other provisions of the Act. Even though a declaration of policy is not a substantive part of a statute, it may be used to clarify ambiguous portions thereof. (Triple A Services, Inc. v. Rice (1989), 131 Ill. 2d 217, 227.) One court, for example, in determining whether disclosure of certain disciplinary notices would constitute a clearly unwarranted invasion of personal privacy under subsection 7(1)(b) of the Act stated that consideration of the requestor's interest in disclosure was necessary in order to give effect to the General Assembly's intent that the Act not be used for commercial purposes. (David Blumenfeld, Ltd. v. Department of Professional Regulation (1st Dist. 1993), 263 Ill. App. 3d 981, 988 (law firm's intention to use names and addresses from disciplinary notices to advertise to potential clients and minimal public interest in disclosure not sufficient to outweigh privacy interests).) The nature of the

requestor's intended use could also come into play as a factor in determining, for example, whether compliance with a request would be unduly burdensome under subsection 3(f) of the Act or whether to waive or reduce copying charges in the public interest under subsection 6(b).

VI. Who has the right to inspect public records?

Section 3 requires public bodies to make public records available "to any person". A "person" is defined in subsection 2(b) as "any individual, corporation, partnership, firm, organization or association, acting individually or as a group".

VII. Does the Freedom of Information Act determine how public records must be maintained?

The purpose of the Freedom of Information Act is to give the public access to records kept by public bodies. The Act was not generally intended to dictate the manner in which public records must be maintained. The provisions of the State Records Act (5 ILCS 160/1 et seq.) and the Local Records Act (50 ILCS 205/1 et seq.) require the preservation of certain public records and establish procedures to be followed when maintaining these records. (See Lopez v. Fitzgerald (1979), 76 Ill. 2d 107.) These Acts are still in force, and public records must be maintained according to their provisions.

VIII. Does the Act require the production of new types of documents?

As a general principle, public bodies are not required to create records to respond to requests for information that the body does not ordinarily maintain in record form. (Kenyon v. Garrels (4th Dist. 1989), 184

Ill. App. 3d 28, 32.) Deleting information from a record or scrambling a record does not constitute the creation of a "new" record. (Bowie v. Evanston Community Consolidated School District (1989), 128 Ill. 2d 373, 382.) Similarly, the preparation of a computer program to segregate exempt from non-exempt information in computer-maintained records is not the creation of a "new record". Hamer v. Lentz (1989), 132 Ill. 2d 49, 56.

Further, a public body is under no duty to recreate records that it no longer possesses, at least to the extent that such records were not disposed of to avoid compliance with the Act. Workmann v. Illinois State Board of Education (2nd Dist. 1992), 229 Ill. App. 3d 459.

In order to comply with the statutory procedures, however, some documents may have to be created. Specifically, the Act requires every public body to produce a brief description of itself, that must include a short summary of the body's purpose, a block diagram giving its functional subdivisions, the total amount of its operating budget, the number and location of all its separate offices and the approximate number of its full and part-time employees. The description must also identify and describe the membership of any board, commission, committee or council that advises or exercises control over the public body. The required description must be prominently displayed at all administrative or regional offices of the body, must be available for inspection and copying by the public and must be sent through the mail to anyone requesting a copy.

The Act also requires every public body to produce a brief description of the manner in which members of the public may request information and public records, a directory designating, by titles and

addresses, those employees to whom requests for public records should be directed and a schedule of fees to be assessed for providing copies of public records. This document must be prominently displayed at all administrative or regional offices of the body, must be available for inspection and copying and must be mailed to anyone requesting a copy.

Public bodies must also maintain and make available for inspection and copying a current list of all types or categories of records prepared or received after July 1, 1984. The list must be reasonably detailed in order to aid persons in obtaining access to public records.

Public bodies are also required to maintain and furnish upon request a description of the manner in which public records stored by means of electronic data processing can be obtained by the public. The Act requires that records kept through data processing be made available to the public "in a form comprehensible to persons lacking knowledge of computer language or printout format".

Lastly, public bodies must maintain copies of all notices of denial of access to public records. These denial notices must be kept in a single central office file that is open to the public, and must be indexed according to the types of exceptions asserted in the denial, and, to the extent feasible, according to the types of records requested. In Duncan Publishing, Inc. v. City of Chicago (1st Dist. 1999), 304 Ill. App. 3d 778, the court held that each city department was a subsidiary body of the city and a public body so that the requirement that each public body keep its denial notices in a single file was satisfied by the keeping of a single file in each city department.

IX. Does the Act apply to public records compiled before the Act took effect?

In general, the Act applies to all public records, regardless of when they were compiled. According to subsection 2(c), the term "public records" includes records "having been prepared, or having been or being used, received, possessed or under the control of any public body". This definition necessarily includes records that are presently under the control of or in the possession of a public body that were prepared before the Act was passed. See Carrigan v. Harkrader (3rd Dist. 1986), 146 Ill. App. 3d 535.

There is, however, one exception to this general rule. Records or reports of the obligation, receipt and use of public funds of the State and of local governmental units that were prepared or received prior to July 1, 1984, are available for inspection by the public under the terms of the State Records Act and the Local Records Act, respectively. Records of the receipt and use of public funds that were prepared or received after July 1, 1984, however, are covered by the Freedom of Information Act.

It is clear that a public body must make all records relating to the receipt and use of public funds available for public inspection. These exceptions provide only that inspection of older financial records shall be made under the provisions of the statutes that previously governed them, while inspection of newer financial records, together with all other public records, will be made under the provisions of the Freedom of Information Act.

X. How is a request for public records made to a public body?

Under the Act, a person can request public records either in person or in writing. The appeal procedure set out in the Act and the time

limits placed on public bodies for responding to requests for records, however, are keyed to the submission of written requests. Furthermore, it may not be possible to fill an oral request while the requesting party waits. Therefore, it is recommended that when a request is made in person, the requesting person be asked to reduce that request to writing. This will facilitate the search for records and will avoid problems if the request is denied.

Other than the need for a written request, the Act does not specify the manner in which requests are to be made. A person can request a substantial number of specified records (subsection 3(d)(i)), or make broad requests for all records falling within a category (subsection 3(f)). The request must, however, reasonably identify the records that have been requested. Kenyon v. Garrels (4th Dist. 1989), 184 Ill. App. 3d 28.

The Act does provide that a request for all public records within a category should not be "unduly burdensome". Under subsection 3(d)(vi) of the Act, if a burdensome categorical request is made, a public body may extend the time period within which to comply with the request. (Time limitations under the Act are discussed under question XIV.) Under subsection 3(f), a public body need not comply with a categorical request if compliance "would be unduly burdensome for the complying public body and there is no way to narrow the request and the burden on the public body outweighs the public interest in the information". That subsection also provides that repeated requests for the same public records by the same person shall be deemed unduly burdensome. (See AFSCME v. County of Cook (1990), 136 Ill. 2d 334, wherein the supreme court suggested that repeated requests for the same records in different

formats may be considered unduly burdensome.) Before invoking this exception, however, the public body must give the requesting person an opportunity to reduce the request to manageable proportions. If a public body invokes this exception, it must do so in writing, explaining why the request is deemed to be unduly burdensome.

While the statute does not set out detailed requirements for requests, subsection 3(g) does authorize public bodies to promulgate rules and regulations pertaining to the availability of records and procedures to be followed in inspecting or acquiring copies of them. These rules and regulations can cover such areas as the time and place where records will be available, and the persons who will respond to requests for records.

XI. How must a public body comply with a request for public records?

Every public body is required to permit inspection or, upon submission of a written request, to provide copies of any requested records that are subject to disclosure under the Act. When copies are requested, the public body may charge fees reasonably calculated to reimburse it for the actual cost of reproducing and certifying public records. These fees, however, cannot include any of the cost of searching for the requested records, and cannot exceed the cost of reproduction. The Act provides that documents shall be furnished without charge or at a reduced charge where the public determines that waiver or reduction of fees "is in the public interest". A waiver or reduction is "in the public interest" if the primary purpose of the request for access is to disseminate information for the benefit of the general public and not for personal or commercial benefit. A request made by the news media is not for "commercial benefit" when the

principal purpose of the request is to obtain and disseminate information regarding the health, safety, and welfare or the legal rights of the general public. (Subsection 6(b).) It should also be stressed that the fundamental right guaranteed by the Act is the right of inspection and that, while a person may obtain copies of records requested, he or she is not required to purchase copies of records in order to gain access to them. In addition, subsection 3(a) prohibits public bodies from granting to anyone the exclusive right to gain access to and to disseminate any public record.

XII. What procedures must a public body follow in denying a request for public records?

When a request for public records is denied by a public body, that body must, within seven working days, or within any extended compliance period provided for in the Act, notify the person who made the request, by letter, of the decision to deny the request. The letter must explain the reasons for the denial, and give the names and titles of all persons responsible for the denial. When a denial is based upon one of the exemptions enumerated in the Act, the denial letter must specify the exception authorizing the denial. The letter must also explain that the requesting party can appeal the denial to the head of the public body. If the head of the body or his designee denies such an appeal, he must explain in his letter of denial that the requesting person has a right to judicial review of his decision. (Judicial review is discussed under question XIII.)

The Act also requires that copies of all letters of denial be retained by the public body, and be kept in a single office file that is open to the public. The file must be indexed both by type of exception asserted

and, to the extent feasible, by the types of records requested. (See discussion under question VIII above.)

XIII. How can the denial of a request for public records be appealed?

Any person denied access to inspect or copy any public record for any reason may appeal the denial by sending a written notice of appeal to the head of the public body. According to section 2 of the Act, the head of a public body is "the president, mayor, chairman, presiding officer, director, superintendent, manager, supervisor or individual otherwise holding primary executive and administrative authority for the public body". Upon receiving that written notice, the head of the public body, or such person's designee, is required to review the requested public record promptly, and to determine whether, under the provisions of the Act, such records are open to inspection and copying. The person requesting the records must be notified of that determination within seven working days.

If the head of a public body or his designee denies access to public records, he or she must explain in his letter of denial that the person requesting the records has a right to judicial review of that decision. Under section 10 of the Act, when the head of a public body denies access to public records, the requesting person is "deemed to have exhausted his administrative remedies". After that, the requesting person may file suit in the circuit court for injunctive or declaratory relief.

When the denial is from the head of a public body of the State, suit may be filed in the circuit court for the county in which the public body has its principal office or where the requesting party resides. When the denial is from the head of a municipality or other type of public body, suit

must be brought in the circuit court for the county in which the public body is located.

When such a suit is brought in the circuit court, the court will consider the matter "de novo". In other words, the court will consider the suit as a new matter, not as an appeal from the decision of the head of the public body. Suits brought under the Act are to be "assigned for hearing and trial at the earliest practicable date and expedited in every way". The Act allows the court to examine the requested records in private to determine whether they may be withheld. Consistent with its express policy of promoting the disclosure of records, the Act places the burden upon the public body to establish that refusal to permit public access is in accordance with the Act. See Baudin v. City of Crystal Lake (2nd Dist. 1989), 192 Ill. App. 3d 530, 535.

When suit is brought under the Act, the circuit court has jurisdiction to enjoin a public body from withholding public records and to order the production of any records which have been improperly withheld. The court may also retain jurisdiction and allow the public body additional time to review the records if the body can show that exceptional circumstances exist and that it is exercising due diligence in responding to the request, and may order the public body to provide an index of the records to which access has been denied. The court can enforce any order entered under the Act against any public official through the court's contempt powers.

The court also can award attorney's fees to the person requesting records if the court finds that the records were of significant interest to the general public and were withheld without any reasonable basis in law, and

that the requesting party substantially prevailed on the merits of the case. The prevailing requesting party cannot be awarded costs (Duncan Publishing, Inc. v. City of Chicago (1st Dist. 1999), 304 Ill. App. 3d 778, 787), and, if appearing pro se (not represented by an attorney), cannot be awarded attorney's fees no matter whether the party is an attorney (Hamer v. Lentz (1989), 132 Ill. 2d 49, 63) or not (Brazas v. Ramsey (2nd Dist. 1997), 291 Ill. App. 3d 104, 109 - 110). A requesting party may be said to have substantially prevailed for purposes of an award of attorney's fees even if the records are turned over before judgment or any other ruling by the court on the merits of a claimed exemption (People ex rel. Ulrich v. Stukel (1st Dist. 1997), 294 Ill. App. 3d 193, 202, appeal denied, 178 Ill. 2d 595), but the mere fact that a suit was filed before the records were turned over does not mean the party substantially prevailed (Duncan Publishing, Inc. v. City of Chicago (1st Dist. 1999), 304 Ill. App. 3d 778, 786-787 (city's production of records after filing of suit could have been due to routine administrative processing and independent of suit)). The inquiry in either case is whether the filing of the suit was reasonably necessary to obtain the information and whether the filing of the suit substantially caused the production of the records sought.

XIV. How much time does a public body have to process a request for public records?

The Act provides a timetable to which all public bodies must adhere when processing requests for public records. When a written request for public records is submitted, a public body is required either to comply with or deny the request "promptly". The term "promptly" is not defined in

the Act, but the term implies that a public body should respond to requests as quickly as practicable. Absent extraordinary circumstances, the public body must respond within seven working days of the request. Failure to respond within this time period is considered a denial of the request under the Act.

Under extraordinary circumstances, the Act provides that the seven day period for response may be extended for up to seven additional working days. Subsection 3(d) provides that the time period may be extended if:

(i) the requested records are stored in whole or in part at other locations than the office having charge of the requested records;

(ii) the request requires the collection of a substantial number of specified records;

(iii) the request is couched in categorical terms and requires an extensive search for the records responsive to it;

(iv) the requested records have not been located in the course of routine search and additional efforts are being made to locate them;

(v) the requested records require examination and evaluation by personnel having the necessary competence and discretion to determine if they are exempt from disclosure under section 7 of this Act or should be revealed only with appropriate deletions;

(vi) the request for records cannot be complied with by the public body within the time limits prescribed by subsection 3(c) without unduly burdening or interfering with the operations of the public body; or

(vii) there is a need for consultation, which shall be conducted with all practicable speed, with another public body or among two or more components of a public body having a substantial interest in the determination or in the subject matter of the request.

When additional time is required for any of these reasons, the public body must notify the person making the request by letter specifying the reason for the delay and the date when either the records will be released or

the denial of the request will be made. This letter must be sent within the original seven day period. The extended time period cannot be longer than seven extra working days, and if a response is not made within that extended period, the request will be considered denied.

A similar maximum period for reply is placed upon heads of public bodies when a requesting person appeals the denial of a request for records. When the requesting party appeals to the head of a public body, the head of the public body or his designee must determine whether the records will be released and notify the requesting party of his determination within seven working days.

If suit is brought against the public body, the court may allow the public body additional time to review the records. However, in such a case the public body must show that exceptional circumstances exist, and that the body is exercising due diligence in responding to the request.

XV. Suggestions for implementing the Freedom of Information Act.

The Freedom of Information Act does not fully specify the procedures that public bodies must follow to implement its provisions. Consequently, public bodies have to take some basic steps to comply with the Act. A few suggestions to assist public bodies in compliance are set forth below.

As was noted under question VIII above, section 5 of the Act requires public bodies to maintain, and make available for inspection and copying, a list of all types and categories of records prepared or received after July 1, 1984. The list required by section 5 of the Act must contain

all types of records, including those exempt from disclosure under section 7. The list should be reviewed periodically to ensure that it accurately reflects the current records of the public body.

The head of the public body should also confer with the directors or heads of divisions or subdivisions of the public body, and with counsel for that body, to make preliminary determinations as to what records of the body may be exempt from public inspection under section 7. This will reduce the need for case-by-case or ad hoc review of requests for records. This process will also reduce the time needed to respond to requests and will provide guidance to those who handle requests on a day-to-day basis. Note that these preliminary determinations are not final, and only provide guidelines within which a request for disclosure should be decided.

The public body should also consider what documents, if any, will be furnished free of charge under subsection 6(b) of the Act, which provides that public bodies may furnish documents free of charge or at a reduced charge where the agency determines that waiver or reduction of the fee is in the public interest. Such a preliminary determination will assist public bodies in responding to requests more efficiently.

The body should periodically review and update the types of documents that are required to be maintained under the Act. These documents are described in question VIII above and include a list of records, a description of how records are available (discussed below), a brief description of the public body and a description of the means whereby records stored through data processing can be obtained by the public.

Public bodies should periodically review the procedures they have established for carrying out the Act, or, if none have previously been established, consider doing so. Subsection 3(g) of the Act authorizes the promulgation of rules in this regard. It is suggested that such rules establish the times and places where records will be available, the persons within the body who will respond to requests and should set out the manner of response. The rules may establish a fee schedule for access to records consistent with section 6 of the Act. Subsection 3(b) also requires public bodies to certify records when so requested, and therefore, procedures for certifying records should be included in the rules. In accordance with section 4 of the Act, the rules describing the methods whereby records can be acquired must be displayed at each office of the public body, and must be prepared so that copies of those rules can be mailed out when requested.

Because written requests are so important to the procedures outlined in the Act, the body should have a request form to be filled out when personal requests are made. Forms should be tailored to fit the needs of the public body.

The body should be certain that its procedure for denial of requests complies with the provisions of section 9 of the Act. In general, letters of denial must explain the reasons for denial of a request and must inform the requesting person of his right to appeal the denial. Letters of denial of appeal must comply with the provisions of section 10.

TEXT OF THE ACT

The Freedom of Information Act

AN ACT in relation to access to public records and documents.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

(5 ILCS 140/1) (from Ch. 116, par. 201)

Sec. 1. Pursuant to the fundamental philosophy of the American constitutional form of government, it is declared to be the public policy of the State of Illinois that all persons are entitled to full and complete information regarding the affairs of government and the official acts and policies of those who represent them as public officials and public employees consistent with the terms of this Act. Such access is necessary to enable the people to fulfill their duties of discussing public issues fully and freely, making informed political judgments and monitoring government to ensure that it is being conducted in the public interest.

This Act is not intended to be used to violate individual privacy, nor for the purpose of furthering a commercial enterprise, or to disrupt the duly-undertaken work of any public body independent of the fulfillment of any of the fore-mentioned rights of the people to access to information.

This Act is not intended to create an obligation on the part of any public body to maintain or prepare any public record which was not maintained

or prepared by such public body at the time when this Act becomes effective, except as otherwise required by applicable local, State or federal law.

These restraints on information access should be seen as limited exceptions to the general rule that the people have a right to know the decisions, policies, procedures, rules, standards, and other aspects of government activity that affect the conduct of government and the lives of any or all of the people. The provisions of this Act shall be construed to this end.

This Act shall be the exclusive State statute on freedom of information, except to the extent that other State statutes might create additional restrictions on disclosure of information or other laws in Illinois might create additional obligations for disclosure of information to the public.

(Source: P.A. 83-1013.)

(5 ILCS 140/1.1) (from Ch. 116, par. 201.1)

Sec. 1.1. This Act may be cited as the Freedom of Information Act.

(Source: P.A. 86-1475.)

(5 ILCS 140/2) (from Ch. 116, par. 202)

Sec. 2. Definitions. As used in this Act:

(a) "Public body" means any legislative, executive, administrative, or advisory bodies of the State, state universities and colleges, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees, or commissions of this State, and any subsidiary bodies of any of the foregoing including but not limited to committees and subcommittees which are

supported in whole or in part by tax revenue, or which expend tax revenue. "Public body" does not include a child death review team established under the Child Death Review Team Act.

(b) "Person" means any individual, corporation, partnership, firm, organization or association, acting individually or as a group.

(c) "Public records" means all records, reports, forms, writings, letters, memoranda, books, papers, maps, photographs, microfilms, cards, tapes, recordings, electronic data processing records, recorded information and all other documentary materials, regardless of physical form or characteristics, having been prepared, or having been or being used, received, possessed or under the control of any public body. "Public records" includes, but is expressly not limited to: (i) administrative manuals, procedural rules, and instructions to staff, unless exempted by Section 7(p) of this Act; (ii) final opinions and orders made in the adjudication of cases, except an educational institution's adjudication of student or employee grievance or disciplinary cases; (iii) substantive rules; (iv) statements and interpretations of policy which have been adopted by a public body; (v) final planning policies, recommendations, and decisions; (vi) factual reports, inspection reports, and studies whether prepared by or for the public body; (vii) all information in any account, voucher, or contract dealing with the receipt or expenditure of public or other funds of public bodies; (viii) the names, salaries, titles, and dates of employment of all employees and officers of public bodies; (ix) materials containing opinions concerning the rights of the state, the public, a subdivision of state or a local government, or of any

private persons; (x) the name of every official and the final records of voting in all proceedings of public bodies; (xi) applications for any contract, permit, grant, or agreement except as exempted from disclosure by subsection (g) of Section 7 of this Act; (xii) each report, document, study, or publication prepared by independent consultants or other independent contractors for the public body; (xiii) all other information required by law to be made available for public inspection or copying; (xiv) information relating to any grant or contract made by or between a public body and another public body or private organization; (xv) waiver documents filed with the State Superintendent of Education or the president of the University of Illinois under Section 30-12.5 of the School Code, concerning nominees for General Assembly scholarships under Sections 30-9, 30-10, and 30-11 of the School Code and (xvi) complaints, results of complaints, and Department of Children and Family Services staff findings of licensing violations at day care facilities, provided that personal and identifying information is not released.

(d) "Copying" means the reproduction of any public record by means of any photographic, electronic, mechanical or other process, device or means.

(e) "Head of the public body" means the president, mayor, chairman, presiding officer, director, superintendent, manager, supervisor or individual otherwise holding primary executive and administrative authority for the public body, or such person's duly authorized designee.

(f) "News media" means a newspaper or other periodical issued at regular intervals, a news service, a radio station, a television station, a

community antenna television service, or a person or corporation engaged in making news reels or other motion picture news for public showing.

(Source: P.A. 90-670.)

(5 ILCS 140/3) (from Ch. 116, par. 203)

Sec. 3. (a) Each public body shall make available to any person for inspection or copying all public records, except as otherwise provided in Section 7 of this Act. Notwithstanding any other law, a public body may not grant to any person or entity, whether by contract, license, or otherwise, the exclusive right to access and disseminate any public record as defined in this Act.

(b) Subject to the fee provisions of Section 6 of this Act, each public body shall promptly provide, to any person who submits a written request, a copy of any public record required to be disclosed by subsection (a) of this Section and shall certify such copy if so requested.

(c) Each public body shall, promptly, either comply with or deny a written request for public records within 7 working days after its receipt. Denial shall be by letter as provided in Section 9 of this Act. Failure to respond to a written request within 7 working days after its receipt shall be considered a denial of the request.

(d) The time limits prescribed in paragraph (c) of this Section may be extended in each case for not more than 7 additional working days for any of the following reasons:

(i) the requested records are stored in whole or in part at other locations than the office having charge of the requested records;

(ii) the request requires the collection of a substantial number of specified records;

(iii) the request is couched in categorical terms and requires an extensive search for the records responsive to it;

(iv) the requested records have not been located in the course of routine search and additional efforts are being made to locate them;

(v) the requested records require examination and evaluation by personnel having the necessary competence and discretion to determine if they are exempt from disclosure under Section 7 of this Act or should be revealed only with appropriate deletions;

(vi) the request for records cannot be complied with by the public body within the time limits prescribed by paragraph (c) of this Section without unduly burdening or interfering with the operations of the public body;

(vii) there is a need for consultation, which shall be conducted with all practicable speed, with another public body or among two or more components of a public body having a substantial interest in the determination or in the subject matter of the request.

(e) When additional time is required for any of the above reasons, the public body shall notify by letter the person making the written request within the time limits specified by paragraph (c) of this Section of the reasons for the delay and the date by which the records will be made available or denial will be forthcoming. In no instance, may the delay in processing last longer than 7 working days. A failure to render a decision within 7 working days shall be considered a denial of the request.

(f) Requests calling for all records falling within a category shall be complied with unless compliance with the request would be unduly burdensome for the complying public body and there is no way to narrow the request and the burden on the public body outweighs the public interest in the information. Before invoking this exemption, the public body shall extend to the person making the request an opportunity to confer with it in an attempt to reduce the request to manageable proportions. If any body responds to a categorical request by stating that compliance would unduly burden its operation and the conditions described above are met, it shall do so in writing, specifying the reasons why it would be unduly burdensome and the extent to which compliance will so burden the operations of the public body. Such a response shall be treated as a denial of the request for information. Repeated requests for the same public records by the same person shall be deemed unduly burdensome under this provision.

(g) Each public body may promulgate rules and regulations in conformity with the provisions of this Section pertaining to the availability of records and procedures to be followed, including:

(i) the times and places where such records will be made available, and

(ii) the persons from whom such records may be obtained.

(Source: P.A. 90-206.)

(5 ILCS 140/4) (from Ch. 116, par. 204)

Sec. 4. Each public body shall prominently display at each of its administrative or regional offices, make available for inspection and copying, and send through the mail if requested, each of the following:

(a) A brief description of itself, which will include, but not be limited to, a short summary of its purpose, a block diagram giving its functional subdivisions, the total amount of its operating budget, the number and location of all of its separate offices, the approximate number of full and part-time employees, and the identification and membership of any board, commission, committee, or council which operates in an advisory capacity relative to the operation of the public body, or which exercises control over its policies or procedures, or to which the public body is required to report and be answerable for its operations; and

(b) A brief description of the methods whereby the public may request information and public records, a directory designating by titles and addresses those employees to whom requests for public records should be directed, and any fees allowable under Section 6 of this Act.

(Source: P.A. 83-1013.)

(5 ILCS 140/5) (from Ch. 116, par. 205)

Sec. 5. As to public records prepared or received after the effective date of this Act, each public body shall maintain and make available for inspection and copying a reasonably current list of all types or categories of records under its control. The list shall be reasonably detailed in order to aid persons in obtaining access to public records pursuant to this Act. Each public body shall furnish upon request a description of the manner in which public records stored by means of electronic data processing may be obtained in a form comprehensible to persons lacking knowledge of computer language or printout format.

(Source: P.A. 83-1013.)

(5 ILCS 140/6) (from Ch. 116, par. 206)

Sec. 6. Authority to charge fees.

(a) Each public body may charge fees reasonably calculated to reimburse its actual cost for reproducing and certifying public records and for the use, by any person, of the equipment of the public body to copy records. Such fees shall exclude the costs of any search for and review of the record, and shall not exceed the actual cost of reproduction and certification, unless otherwise provided by State statute. Such fees shall be imposed according to a standard scale of fees, established and made public by the body imposing them.

(b) Documents shall be furnished without charge or at a reduced charge, as determined by the public body, if the person requesting the documents states the specific purpose for the request and indicates that a waiver or reduction of the fee is in the public interest. Waiver or reduction of the fee is in the public interest if the principal purpose of the request is to access and disseminate information regarding the health, safety and welfare or the legal rights of the general public and is not for the principal purpose of personal or commercial benefit. For purposes of this subsection, "commercial benefit" shall not apply to requests made by news media when the principal purpose of the request is to access and disseminate information regarding the health, safety, and welfare or the legal rights of the general public. In setting the amount of the waiver or reduction, the public body may take into consideration the amount of materials requested and the cost of copying them.

(c) The purposeful imposition of a fee not consistent with subsections (6)(a) and (b) of this Act shall be considered a denial of access to public records for the purposes of judicial review.

(d) The fee for an abstract of a driver's record shall be as provided in Section 6-118 of "The Illinois Vehicle Code", approved September 29, 1969, as amended.

(Source: P.A. 90-144.)

(5 ILCS 140/7) (from Ch. 116, par. 207)

Sec. 7. Exemptions.

(1) The following shall be exempt from inspection and copying:

(a) Information specifically prohibited from disclosure by federal or State law or rules and regulations adopted under federal or State law.

(b) Information that, if disclosed, would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information. The disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy. Information exempted under this subsection (b) shall include but is not limited to:

(i) files and personal information maintained with respect to clients, patients, residents, students or other individuals receiving social, medical, educational, vocational, financial, supervisory or custodial care or services directly or indirectly from federal agencies or public bodies;

(ii) personnel files and personal information maintained with respect to employees, appointees or elected officials of any public body or applicants for those positions;

(iii) files and personal information maintained with respect to any applicant, registrant or licensee by any public body cooperating with or engaged in professional or occupational registration, licensure or discipline;

(iv) information required of any taxpayer in connection with the assessment or collection of any tax unless disclosure is otherwise required by State statute; and

(v) information revealing the identity of persons who file complaints with or provide information to administrative, investigative, law enforcement or penal agencies; provided, however, that identification of witnesses to traffic accidents, traffic accident reports, and rescue reports may be provided by agencies of local government, except in a case for which a criminal investigation is ongoing, without constituting a clearly unwarranted per se invasion of personal privacy under this subsection.

(c) Records compiled by any public body for administrative enforcement proceedings and any law enforcement or correctional agency for law enforcement purposes or for internal matters of a public body, but only to the extent that disclosure would:

(i) interfere with pending or actually and reasonably contemplated law enforcement proceedings conducted by any law enforcement or correctional agency;

(ii) interfere with pending administrative enforcement proceedings conducted by any public body;

(iii) deprive a person of a fair trial or an impartial hearing;

(iv) unavoidably disclose the identity of a confidential source or confidential information furnished only by the confidential source;

(v) disclose unique or specialized investigative techniques other than those generally used and known or disclose internal documents of correctional agencies related to detection, observation or investigation of incidents of crime or misconduct;

(vi) constitute an invasion of personal privacy under subsection (b) of this Section;

(vii) endanger the life or physical safety of law enforcement personnel or any other person; or

(viii) obstruct an ongoing criminal investigation.

(d) Criminal history record information maintained by State or local criminal justice agencies, except the following which shall be open for public inspection and copying:

(i) chronologically maintained arrest information, such as traditional arrest logs or blotters;

(ii) the name of a person in the custody of a law enforcement agency and the charges for which that person is being held;

(iii) court records that are public;

(iv) records that are otherwise available under State or local law; or

(v) records in which the requesting party is the individual identified, except as provided under part (vii) of paragraph (c) of subsection (1) of this Section.

"Criminal history record information" means data identifiable to an individual and consisting of descriptions or notations of arrests, detentions, indictments, informations, pre-trial proceedings, trials, or other formal events in the criminal justice system or descriptions or notations of criminal charges (including criminal violations of local municipal ordinances) and the nature of any disposition arising therefrom, including sentencing, court or correctional supervision, rehabilitation and release. The term does not apply to statistical records and reports in which individuals are not identified and from which their identities are not ascertainable, or to information that is for criminal investigative or intelligence purposes.

(e) Records that relate to or affect the security of correctional institutions and detention facilities.

(f) Preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated, except that a specific record or relevant portion of a record shall not be exempt when the record is publicly cited and identified by the head of the public body. The exemption provided in this paragraph (f) extends to all those records of officers and agencies of the General Assembly that pertain to the preparation of legislative documents.

(g) Trade secrets and commercial or financial information obtained from a person or business where the trade secrets or information are proprietary, privileged or confidential, or where disclosure of the trade secrets or information may cause competitive harm, including all information determined to be confidential under Section 4002 of the Technology Advancement

and Development Act. Nothing contained in this paragraph (g) shall be construed to prevent a person or business from consenting to disclosure.

(h) Proposals and bids for any contract, grant, or agreement, including information which if it were disclosed would frustrate procurement or give an advantage to any person proposing to enter into a contractor agreement with the body, until an award or final selection is made. Information prepared by or for the body in preparation of a bid solicitation shall be exempt until an award or final selection is made.

(i) Valuable formulae, designs, drawings and research data obtained or produced by any public body when disclosure could reasonably be expected to produce private gain or public loss.

(j) Test questions, scoring keys and other examination data used to administer an academic examination or determined the qualifications of an applicant for a license or employment.

(k) Architects' plans and engineers' technical submissions for projects not constructed or developed in whole or in part with public funds and for projects constructed or developed with public funds, to the extent that disclosure would compromise security.

(l) Library circulation and order records identifying library users with specific materials.

(m) Minutes of meetings of public bodies closed to the public as provided in the Open Meetings Act until the public body makes the minutes available to the public under Section 2.06 of the Open Meetings Act.

(n) Communications between a public body and an attorney or auditor representing the public body that would not be subject to discovery in

litigation, and materials prepared or compiled by or for a public body in anticipation of a criminal, civil or administrative proceeding upon the request of an attorney advising the public body, and materials prepared or compiled with respect to internal audits of public bodies.

(o) Information received by a primary or secondary school, college or university under its procedures for the evaluation of faculty members by their academic peers.

(p) Administrative or technical information associated with automated data processing operations, including but not limited to software, operating protocols, computer program abstracts, file layouts, source listings, object modules, load modules, user guides, documentation pertaining to all logical and physical design of computerized systems, employee manuals, and any other information that, if disclosed, would jeopardize the security of the system or its data or the security of materials exempt under this Section.

(q) Documents or materials relating to collective negotiating matters between public bodies and their employees or representatives, except that any final contract or agreement shall be subject to inspection and copying.

(r) Drafts, notes, recommendations and memoranda pertaining to the financing and marketing transactions of the public body. The records of ownership, registration, transfer, and exchange of municipal debt obligations, and of persons to whom payment with respect to these obligations is made.

(s) The records, documents and information relating to real estate purchase negotiations until those negotiations have been completed or otherwise terminated. With regard to a parcel involved in a pending or

actually and reasonably contemplated eminent domain proceeding under Article VII of the Code of Civil Procedure, records, documents and information relating to that parcel shall be exempt except as may be allowed under discovery rules adopted by the Illinois Supreme Court. The records, documents and information relating to a real estate sale shall be exempt until a sale is consummated.

(t) Any and all proprietary information and records related to the operation of an intergovernmental risk management association or self-insurance pool or jointly self-administered health and accident cooperative or pool.

(u) Information concerning a university's adjudication of student or employee grievance or disciplinary cases, to the extent that disclosure would reveal the identity of the student or employee and information concerning any public body's adjudication of student or employee grievances or disciplinary cases, except for the final outcome of the cases.

(v) Course materials or research materials used by faculty members.

(w) Information related solely to the internal personnel rules and practices of a public body.

(x) Information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of a public body responsible for the regulation or supervision of financial institutions or insurance companies, unless disclosure is otherwise required by State law.

(y) Information the disclosure of which is restricted under Section 5-108 of the Public Utilities Act.

(z) Manuals or instruction to staff that relate to establishment or collection of liability for any State tax or that relate to investigations by a public body to determine violation of any criminal law.

(aa) Applications, related documents, and medical records received by the Experimental Organ Transplantation Procedures Board and any and all documents or other records prepared by the Experimental Organ Transplantation Procedures Board or its staff relating to applications it has received.

(bb) Insurance or self insurance (including any intergovernmental risk management association or self insurance pool) claims, loss or risk management information, records, data, advice or communications.

(cc) Information and records held by the Department of Public Health and its authorized representatives relating to known or suspected cases of sexually transmissible disease or any information the disclosure of which is restricted under the Illinois Sexually Transmissible Disease Control Act.

(dd) Information the disclosure of which is exempted under Section 60 of the Radon Industry Licensing Act.

(ee) Firm performance evaluations under Section 55 of the Architectural, Engineering, and Land Surveying Qualifications Based Selection Act.

(ff) Security portions of system safety program plans, investigation reports, surveys, schedules, lists, data, or information compiled, collected, or prepared by or for the Regional Transportation Authority under Section 2.11 of the Regional Transportation Authority Act or the State of Missouri under the Bi-State Transit Safety Act.

(gg) Information the disclosure of which is restricted and exempted under Section 50 of the Illinois Prepaid Tuition Act.

(hh) Information the disclosure of which is exempted under Section 80 of the State Gift Ban Act.

(ii) Beginning July 1, 1999, information that would disclose or might lead to the disclosure of secret or confidential information, codes, algorithms, programs, or private keys intended to be used to create electronic or digital signatures under the Electronic Commerce Security Act.

(jj) Information contained in a local emergency energy plan submitted to a municipality in accordance with a local emergency energy plan ordinance that is adopted under Section 11-21.5-5 of the Illinois Municipal Code.

(2) This Section does not authorize withholding of information or limit the availability of records to the public, except as stated in this Section or otherwise provided in this Act.

(Source: P.A. 91-137.)

(5 ILCS 140/7.1) (from Ch. 116, par. 207.1)

Sec. 7.1. Nothing in this Act shall be construed to prohibit publication and dissemination by the Department of Public Aid or the Department of Human Services of the names and addresses of entities which have had receipt of benefits or payments under the Illinois Public Aid Code suspended or terminated or future receipt barred, pursuant to Section 11-26 of that Code.

(Source: P.A. 89-507.)

(5 ILCS 140/8) (from Ch. 116, par. 208)

Sec. 8. If any public record that is exempt from disclosure under Section 7 of this Act contains any material which is not exempt, the public body shall delete the information which is exempt and make the remaining information available for inspection and copying.

(Source: P.A. 85-1357.)

(5 ILCS 140/9) (from Ch. 116, par. 209)

Sec. 9. (a) Each public body or head of a public body denying a request for public records shall notify by letter the person making the request of the decision to deny such, the reasons for the denial, and the names and titles or positions of each person responsible for the denial. Each notice of denial by a public body shall also inform such person of his right to appeal to the head of the public body. Each notice of denial of an appeal by the head of a public body shall inform such person of his right to judicial review under Section 11 of this Act.

(b) When a request for public records is denied on the grounds that the records are exempt under Section 7 of this Act, the notice of denial shall specify the exemption claimed to authorize the denial. Copies of all notices of denial shall be retained by each public body in a single central office file that is open to the public and indexed according to the type of exemption asserted and, to the extent feasible, according to the types of records requested.

(Source: P.A. 83-1013.)

(5 ILCS 140/10) (from Ch. 116, par. 210)

Sec. 10. (a) Any person denied access to inspect or copy any public record may appeal the denial by sending a written notice of appeal to

the head of the public body. Upon receipt of such notice the head of the public body shall promptly review the public record, determine whether under the provisions of this Act such record is open to inspection and copying, and notify the person making the appeal of such determination within 7 working days after the notice of appeal.

(b) Any person making a request for public records shall be deemed to have exhausted his administrative remedies with respect to such request if the head of the public body affirms the denial or fails to act within the time limit provided in subsection (a) of this Section.

(Source: P.A. 83-1013.)

(5 ILCS 140/11) (from Ch. 116, par. 211)

Sec. 11. (a) Any person denied access to inspect or copy any public record by the head of a public body may file suit for injunctive or declaratory relief.

(b) Where the denial is from the head of a public body of the State, suit may be filed in the circuit court for the county where the public body has its principal office or where the person denied access resides.

(c) Where the denial is from the head of a municipality or other public body, except as provided in subsection (b) of this Section, suit may be filed in the circuit court for the county where the public body is located.

(d) The circuit court shall have the jurisdiction to enjoin the public body from withholding public records and to order the production of any public records improperly withheld from the person seeking access. If the public body can show that exceptional circumstances exist, and that the body is exercising due diligence in responding to the request, the court may retain

jurisdiction and allow the agency additional time to complete its review of the records.

(e) On motion of the plaintiff, prior to or after in camera inspection, the court shall order the public body to provide an index of the records to which access has been denied. The index shall include the following:

(i) A description of the nature or contents of each document withheld, or each deletion from a released document, provided, however, that the public body shall not be required to disclose the information which it asserts is exempt; and

(ii) A statement of the exemption or exemptions claimed for each such deletion or withheld document.

(f) In any action considered by the court, the court shall consider the matter de novo, and shall conduct such in camera examination of the requested records as it finds appropriate to determine if such records or any part thereof may be withheld under any provision of this Act. The burden shall be on the public body to establish that its refusal to permit public inspection or copying is in accordance with the provisions of this Act.

(g) In the event of noncompliance with an order of the court to disclose, the court may enforce its order against any public official or employee so ordered or primarily responsible for such noncompliance through the court's contempt powers.

(h) Except as to causes the court considers to be of greater importance, proceedings arising under this Section shall take precedence on

the docket over all other causes and be assigned for hearing and trial at the earliest practicable date and expedited in every way.

(i) If a person seeking the right to inspect or receive a copy of a public record substantially prevails in a proceeding under this Section, the court may award such person reasonable attorneys' fees if the court finds that the record or records in question were of clearly significant interest to the general public and that the public body lacked any reasonable basis in law for withholding the record.

(Source: P.A. 85-1357.)